



**HON. SYLVIA O. HINDS-RADIX**  
*Corporation Counsel*

**THE CITY OF NEW YORK**  
**LAW DEPARTMENT**  
100 CHURCH STREET  
NEW YORK, N.Y. 10007

**MICHAEL PESIN-VIROVETS**  
*Senior Counsel*  
Office: (212) 356-2617  
Mobile: (646) 596-0583  
Email: mpvirove@law.nyc.gov

July 31, 2023

**BY ECF**

Honorable Ramon E. Reyes, Jr.  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

Re: Acosta, et al. v. City of New York, et al.,  
22-CV-00576 (FB) (RER)

Your Honor:

I am a Senior Counsel in the Office of the Honorable Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, and the attorney representing defendants City of New York, and New York City Police Department Police Officers Ramos, Schmidt, Holguin, O'Connor, Lopez, Feliciano, Green, Barias, Spalding, and Lugo in the above-referenced matter. Defendants write to respectfully request (1) a sixty (60) day enlargement of time, from August 1, 2023 until September 30, 2023 for the parties to complete discovery; (2) an additional fourteen (14) day enlargement of time, until August 14, 2023, for all recently served defendants to respond to the Complaint; and (3) a temporary stay of this action, until October 12, 2023, with respect to defendant police officer Kristopher Erickson because he is currently on leave for military service in the United States Air Force until September 12, 2023. Plaintiff's counsel, Jessica Massimi, Esq., consents to Defendants' first two applications but does not consent to the third<sup>1</sup>.

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<sup>1</sup> Plaintiffs' position is as follows with respect to defendants' third application: Plaintiffs do not consent to a stay of the case as to defendant Erickson. Defendants cite *Galgano v. Cty. of Putnam*, 16-CV-3572 (KMK), 2016 U.S. Dist. LEXIS 202480, at \*4 (S.D.N.Y. Nov. 15, 2016) which requires the following: (A) A letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the servicemember's ability to appear and stating a date when the servicemember will be available to appear; (B) A letter or other communication from the servicemember's commanding officer stating that the servicemember's current military duty prevents appearance and that military leave is not authorized for the

By way of background, the deadline to complete all fact discovery is August 1, 2023. (See Docket Entry Dated May 4, 2023). On June 14, 2023, in addition to defendants City, Schmidt, Ramos, O'Connor, and Holguin, who were named in the original complaint, Plaintiff amended the complaint to add Police Officers Jason Lopez, Orvin Feliciano, Frank Green, Kristopher Erickson, Joseph Spalding, David Vasquez, Hector Barias, Sylwia Noacki, and Ivan Lugo as defendants. Upon information and belief, on June 26, 2023 Officers Barias, Feliciano, Lopez, Lugo, Noacki, Spalding, and Vasquez were served with process, and on June 27, 2023, Officers Erickson and Green were served with process.

### ***Representation Issues***

To date, this office has resolved representation with Officers Barias, Feliciano, Green, Lopez, Spalding and Lugo but has not yet been able to resolve representation with Officers Erickson, Noacki, and Vasquez. Indeed, the undersigned just recently made contact with defendant Vasquez, who recently retired from the NYPD, and Defendant Noacki is currently on vacation and is not scheduled to return until August 3, 2023. It is therefore respectfully requested that the Court enlarge the time, until August 14, 2023, for all defendants to respond to the First Amended Complaint.

With respect to defendant police officer Kristopher Erickson, this office has recently learned from the NYPD's legal bureau that officer Erickson is currently on active military leave with the United States Air Force until September 13, 2023. Under the Servicemembers Civil Relief Act ("SCRA"), the Court may stay a civil action entirely until 90 days after a servicemember's release from military service. *See generally* 50 U.S.C.S. § 3932. "The provisions of the SCRA are to be 'liberally construed' and applied in a 'broad spirit of gratitude towards service personnel.'" *Galgano v. Cty. of Putnam*, 16-CV-3572 (KMK), 2016 U.S. Dist. LEXIS 202480, at \*4 (S.D.N.Y. Nov. 15, 2016) (quoting *Engstrom v. First Nat'l Bank of Eagle Lake*, 47 F.3d 1459, 1462 (5th Cir. 1995)). "Indeed, even when applicants have not strictly met the requirements of § 3932, courts have used their inherent power to stay proceedings." *Id.* (collecting cases). Due to his current military leave, officer Erickson remains unrepresented, and, as such, cannot meaningfully participate in defending against plaintiff's claims. Furthermore, our office cannot resolve officer Erickson's representation without an opportunity to speak with him before we may seek relief or respond to the complaint on his behalf. *See Mercurio v. City of New York*, 758 F.2d 862, 864–65 (2d Cir. 1985); *Williams v. City of New York*, 64 N.Y.2d 800, 486 N.Y.S.2d 918

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servicemember at the time of the letter; Defendants have not provided this information nor do they even represent Erickson. As such the Court should deny Defendants' request for a stay of the case.

(1985) (holding that the decision as to whether to represent individual defendants is made by the Corporation Counsel as set forth in state law).

***Request for More Time for Discovery***

Moreover, in light of the recent inclusion of nine new defendants in this matter, additional time will be needed to complete discovery. Specifically, including supplementing paper discovery relevant to the new defendants and scheduling depositions. As such, it is respectfully requested that the Court enlarge the time to complete fact discovery from August 1, 2023 until September 30, 2023.

Accordingly, defendants respectfully request (1) a sixty (60) day enlargement of time, from August 1, 2023 until September 30, 2023 for the parties to complete discovery; (2) an additional fourteen (14) day enlargement of time, until August 14, 2023, for all recently served defendants to respond to the Complaint; and (3) a temporary stay of this action, until October 12, 2023, with respect to defendant police officer Kristopher Erickson because he is currently on leave for military service in the United States Air Force until September 12, 2023. Defendants thank the Court for its consideration of this request.

By: /s/ Michael Pesin-Virovets  
Michael Pesin-Virovets  
*Senior Counsel*

cc: **By ECF**

Elena Louisa Cohen  
Cohen Green PLLC  
*Attorney for Plaintiff*

Remy Green  
Cohen & Green  
*Attorney for Plaintiff*

Jessica S. Massimi  
99 Wall Street, Ste. 1264  
New York, NY 10005  
*Attorney for Plaintiff*

Gideon Orion Oliver  
Attorney at Law  
277 Broadway  
Suite 1501  
New York, NY 10007  
*Attorney for Plaintiff*